

## SENATE BILL No. 78

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1; IC 29-1-13-1.5; IC 29-3-9-1; IC 30-4-2.1-12; IC 30-5-4; IC 32-17-13-4; IC 34-30-2-122.9.

**Synopsis:** Probate and trust matters. Specifies that a qualified personal residence trust is entitled to certain property tax deductions and the homestead credit during the period in which the grantor of the trust is entitled to occupy the residence rent free under the terms of the trust and is otherwise eligible for the deduction or credit. Establishes procedures for obtaining access to a safe deposit box following the death of the individual leasing the safe deposit box. Extends to 12 months the period for which a parent of a minor or a guardian of a protected person can delegate by properly executing a power of attorney certain powers concerning the support, custody, or property of the minor or protected person. Removes the requirement that the parent or guardian be incapacitated or absent during the period in which the delegated powers are conferred upon the attorney in fact. Specifies the order in which beneficiary interests in a trust must be abated if the trust property is insufficient to fully satisfy the interests of all beneficiaries. Permits a power of attorney to be signed at the principal's direction. (Current law requires a power of attorney to be signed by the principal to be valid.) (The introduced version of this bill was prepared by the probate code study commission.)

**Effective:** Upon passage; July 1, 2008.

**Zakas**

January 8, 2008, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 78

A BILL FOR AN ACT to amend the Indiana Code concerning probate and trusts.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-1.1-1-9 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) For purposes  
3       of this article, the "owner" of tangible property shall be determined by  
4       using the rules contained in this section.

5       (b) Except as otherwise provided in this section, the holder of the  
6       legal title to personal property, or the legal title in fee to real property,  
7       is the owner of that property.

8       (c) When title to tangible property passes on the assessment date of  
9       any year, only the person obtaining title is the owner of that property on  
10      the assessment date.

11      (d) When the mortgagee of real property is in possession of the  
12      mortgaged premises, the mortgagee is the owner of that property.

13      (e) When personal property is security for a debt and the debtor is  
14      in possession of the property, the debtor is the owner of that property.

15      (f) When a life tenant of real property is in possession of the real  
16      property, the life tenant is the owner of that property.

17      (g) **When the grantor of a qualified personal residence trust**

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created under United States Treasury Regulation 25.2702-5(c)(2)  
is:

- (1) in possession of the real property transferred to the trust;  
and
- (2) entitled to occupy the real property rent free under the  
terms of the trust;

the grantor is the owner of that real property.

SECTION 2. IC 6-1.1-12-17.9, AS ADDED BY P.L.95-2007,  
SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
UPON PASSAGE]: Sec. 17.9. A trust is entitled to a deduction under  
section 9, 11, 13, 14, 16, or 17.4 of this chapter for real property owned  
by the trust and occupied by an individual if the county auditor  
determines that the individual:

- (1) upon verification in the body of the deed or otherwise, has  
either:

- (A) a beneficial interest in the trust; or

- (B) the right to occupy the real property rent free under  
the terms of a qualified personal residence trust created by  
the individual under United States Treasury Regulation  
25.2702-5(c)(2);

- (2) otherwise qualifies for the deduction; and

- (3) would be considered the owner of the real property under  
IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g).

SECTION 3. IC 6-1.1-20.9-2, AS AMENDED BY P.L.224-2007,  
SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
UPON PASSAGE]: Sec. 2. (a) Except as otherwise provided in section  
5 of this chapter, an individual who on March 1 of a particular year  
either owns or is buying a homestead under a contract that provides the  
individual is to pay the property taxes on the homestead is entitled each  
calendar year to a credit against the property taxes which the individual  
pays on the individual's homestead. However, only one (1) individual  
may receive a credit under this chapter for a particular homestead in a  
particular year.

(b) The amount of the credit to which the individual is entitled  
equals the product of:

- (1) the percentage prescribed in subsection (d); multiplied by
- (2) the amount of the individual's property tax liability, as that  
term is defined in IC 6-1.1-21-5, which is:

- (A) attributable to the homestead during the particular  
calendar year; and

- (B) determined after the application of the property tax  
replacement credit under IC 6-1.1-21.

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(c) For purposes of determining that part of an individual's property tax liability that is attributable to the individual's homestead, all deductions from assessed valuation which the individual claims under IC 6-1.1-12 or IC 6-1.1-12.1 for property on which the individual's homestead is located must be applied first against the assessed value of the individual's homestead before those deductions are applied against any other property.

(d) The percentage of the credit referred to in subsection (b)(1) is as follows:

YEAR	PERCENTAGE OF THE CREDIT
1996	8%
1997	6%
1998 through 2002	10%
2003 through 2005	20%
2006	28%
2007 and thereafter	20%

However, the percentage credit allowed in a particular county for a particular year shall be increased if on January 1 of a year an ordinance adopted by a county income tax council was in effect in the county which increased the homestead credit. The amount of the increase equals the amount designated in the ordinance.

(e) Before October 1 of each year, the assessor shall furnish to the county auditor the amount of the assessed valuation of each homestead for which a homestead credit has been properly filed under this chapter.

(f) The county auditor shall apply the credit equally to each installment of taxes that the individual pays for the property.

(g) Notwithstanding the provisions of this chapter, a taxpayer other than an individual is entitled to the credit provided by this chapter if:

(1) an individual uses the residence as the individual's principal place of residence;

(2) the residence is located in Indiana;

(3) the individual:

(A) has a beneficial interest in the taxpayer; or

**(B) has the right to occupy the residence rent free under the terms of a qualified personal residence trust created by the individual under United States Treasury Regulation 25.2702-5(c)(2);**

(4) the taxpayer either owns the residence or is buying it under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence; and

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(5) the residence consists of a single-family dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

SECTION 4. IC 29-1-13-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. (a) Upon the death of an individual, a financial institution shall grant access in the following order of priority to a safe deposit box leased by the individual at the time of the individual's death:**

(1) A surviving joint lessee of the safe deposit box, upon the presentation of proof of the individual's status as a joint lessee.

(2) The personal representative of the individual's estate, upon the presentation of letters testamentary or letters of administration.

(3) The personal representative named in the individual's will, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.

(4) The trustee of a trust created by the individual that was revocable during the individual's life, upon the presentation of an affidavit meeting the requirements of subsection (c) if a probate estate has not been opened.

(5) Any other individual, upon the presentation of a court order directing access to the safe deposit box.

(b) A person granted access to a safe deposit box under subsection (a) may exercise the following rights:

(1) The right to open the safe deposit box.

(2) The right to remove the contents of the safe deposit box.

(3) The right to cancel the lease for the safe deposit box.

(c) An affidavit required by subsection (a)(3) or (a)(4) must contain the following information:

(1) The name of the individual leasing the safe deposit box and the date of the individual's death.

(2) A statement as to whether the individual died testate or intestate.

(3) The name of the county in which the individual was domiciled at the time of the individual's death.

(4) A statement that no application or petition for the appointment of a personal representative has been granted or is pending in any jurisdiction.

(5) A statement under the penalty of perjury that the affiant

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is qualified under subsection (a)(3) or (a)(4) to obtain access to the safe deposit box leased by the individual.

(d) A financial institution that is presented with a request for access to a safe deposit box by a person described in subsection (a):

(1) shall grant access to the safe deposit box within three (3) business days of the presentation of the appropriate documentation required by subsection (a); and

(2) is liable to:

(A) the estate of the individual leasing the safe deposit box; or

(B) an individual entitled to access to the safe deposit box under subsection (a);

if it fails to grant access to the safe deposit box within three (3) business days of the presentation of the appropriate documentation required by subsection (a).

(e) A financial institution that provides access to a safe deposit box under this section is discharged and released from liability and responsibility for the assets held in the safe deposit box. The financial institution is not required to:

(1) inquire into the truth of any statement in an affidavit presented under this section; or

(2) participate in the disposition of the assets held in the safe deposit box.

(f) A plaintiff who prevails in an action:

(1) to compel a financial institution presented with a request for access to a safe deposit box in accordance with this section to accept the authority of the person requesting access; or

(2) for damages arising from a financial institution's refusal to grant the requested access;

is entitled to recover the amounts specified in subsection (g).

(g) A prevailing plaintiff described in subsection (f) is entitled to the following:

(1) Three (3) times the amount of the actual damages.

(2) Attorney's fees and court costs.

(3) Prejudgment interest on the actual damages calculated from the date that the appropriate documentation was presented to the financial institution under subsection (a).

SECTION 5. IC 29-3-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) By a properly executed power of attorney, a parent of a **minor** or a guardian (other than a temporary guardian) of an ~~incapacitated person or minor~~, a **protected person** may delegate to another person for:

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(1) any period during which the care and custody of the **minor or** protected person is entrusted to an institution furnishing care, custody, education, **or** training; or

(2) a period not exceeding ~~sixty (60) days~~ during which the parent ~~or guardian is physically incapacitated or absent from the parent's or guardian's residence;~~ **twelve (12) months;**

any powers regarding support, custody, or property of the **minor or** protected person, except the power to consent to the marriage or adoption of a protected person who is a minor.

(b) A person having a power of attorney executed under subsection (a) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the support, custody, or property of the **minor or** protected person except any authority expressly excluded in the written instrument delegating the power. However, the parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the **minor or** protected person as though the power of attorney had never been executed.

(c) **Except as otherwise stated in the power of attorney delegating powers under this section, a delegation of powers under this section may be revoked by a written instrument of revocation that:**

(1) identifies the power of attorney revoked; and

(2) is signed by the:

(A) parent of a minor; or

(B) guardian of a protected person;

**who executed the power of attorney.**

SECTION 6. IC 30-4-2.1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) If a trust is terminated or partially terminated, and the available trust property is not sufficient to fully satisfy the interests of all beneficiaries, the interests must be abated in the following order:**

(1) The interests that would be characterized as residuary devises if the trust were a will.

(2) The interests that would be characterized as general devises if the trust were a will.

(3) The interests that would be characterized as specific devises if the trust were a will.

**The amount abated for each beneficiary within each classification described in subdivisions (1) through (3) must be proportional to the amount of property that each beneficiary would have received**

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if full distribution of the trust property had been made in accordance with the terms of the trust instrument.

(b) If:

(1) a trust instrument expresses an order of abatement that differs from the order set forth in subsection (a); or

(2) the order of abatement stated in subsection (a) would impair an express or implied purpose of the trust;

the interests of the beneficiaries must be abated in the manner determined appropriate to give effect to the settlor's intent.

(c) If, under the terms of a trust that was revocable at the time of the settlor's death, the subject of a preferred devise is sold or used to pay debts, expenses, taxes, or other obligations incident to the settlement of the settlor's affairs, abatement must be achieved by adjustment in, or contribution from, other interests in the remaining trust property.

(d) Where applicable, the abatement of beneficiary interests in a trust is subject to IC 32-17-13-4.

SECTION 7. IC 30-5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. To be valid, a power of attorney must meet the following conditions:

(1) Be in writing.

(2) Name an attorney in fact.

(3) Give the attorney in fact the power to act on behalf of the principal.

(4) Be signed by the principal **or at the principal's direction** in the presence of a notary public.

SECTION 8. IC 30-5-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) Except as provided in subsection (b), a power of attorney is effective on the date the power of attorney is signed ~~by the principal~~ **in accordance with section 1(4) of this chapter.**

(b) A power of attorney may:

(1) specify the date on which the power will become effective; or

(2) become effective upon the occurrence of an event.

SECTION 9. IC 32-17-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. Unless otherwise provided by the trust instrument, interest of beneficiaries in all trusts incurring liabilities under this chapter shall abate as necessary to satisfy the liability as if all of the trust instruments were a single ~~will and the interests were devises under it~~ **trust.**

SECTION 10. IC 34-30-2-122.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2008]: **Sec. 122.9. IC 29-1-13-1.5 (Concerning**  
2 **a financial institution granting access to a safe deposit box upon the**  
3 **death of an individual).**

4 SECTION 11. [EFFECTIVE UPON PASSAGE] IC 6-1.1-1-9,  
5 IC 6-1.1-12-17.9, and IC 6-1.1-20.9-2, all as amended by this act,  
6 apply to property taxes first due and payable after December 31,  
7 2008.

8 SECTION 12. An emergency is declared for this act.

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